

Crotty

Gentile & Dickler, LLP (PTG4037)
 Attorneys for Plaintiff
 261 Madison Avenue
 New York, NY 10016
 (212) 619-2700

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UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

EXP GROUP, LLC.,

Plaintiff,

v.

Case No. 07 Civ 9847 *PAC*

LOS COMPADRES PRODUCTS CORP.
 and JOSEFA F. PEREZ,

Defendant.

ORDER TO SHOW CAUSE
 WITH TEMPORARY
 RESTRAINING ORDER

UPON the annexed certification of Ralph Tejeda, with exhibits, the certification of Paul T. Gentile, Esq. as to why notice should not be required pursuant to Fed. R. Civ. P. 65(b), the complaint, and the accompanying memorandum of law, it is

✓ ORDERED, that the Defendants, Los Compadres Products Corp. and Josefa F. Perez, show cause before the Honorable Paul A Crotty, United States District Judge, at the United States Courthouse, 200 Pearl Street, Courtroom 20C, New York, New York 10007, on Tuesday November 13, 2007 at 11 o'clock A. m., or as soon thereafter as counsel can be heard, why a preliminary injunction pursuant to Rule 65(a) of the Federal Rules of Civil Procedure

should not issue enforcing the statutory trust under Section 5(c) of the Perishable Agricultural Commodities Act, 7 U.S.C. § 499e(c)(4), by enjoining the Defendants, their agents, employees, successors, banking institutions, attorneys, and all other persons in active concert and participation with them from using PACA trust assets in their ordinary course of business, or otherwise dissipating trust assets, or making payment of any trust asset to any creditor, person or entity until further order of this Court or until the Defendants pay \$162,214.99, plus interest, costs, and attorneys fees to the plaintiff; and

IT APPEARING to the Court from the certification of Ralph Tejeda, that the Defendants are about to commit the acts hereinafter specified and that they will do so unless restrained by order of this Court, and that immediate and irreparable injury, loss or damage will result to plaintiff before notice can be given and the Defendants or their attorneys can be heard in opposition to the granting of a temporary restraining order, in that Plaintiff and other PACA trust creditors will suffer immediate and irreparable injury in the form of a loss of trust assets; it is therefore

ORDERED, that Defendants, Los Compadres Products Corp. and Josefa F. Perez, their agents, officers, assigns, banking institutions and attorneys and all persons in active concert and participation with them be and they hereby are

- (i) temporarily restrained from violating the provisions of the Perishable Agricultural Commodities Act 7 U.S.C. § 499a et seq. (hereinafter "PACA") and the regulations promulgated thereunder; and

- (ii) temporarily restrained from, in any way, directly or indirectly, in whole or in part, absolutely or as security, paying, withdrawing, transferring, assigning or selling any and all existing PACA trust assets and/or otherwise disposing of company or personal assets to any creditors, persons, or entities until further order of this Court or until the defendants pay the plaintiffs the sum of \$162,214.99 plus interest, costs, and attorneys fees, and
- (iii) ordered that if the Defendants fail to pay Plaintiff in full within three (3) business days from the date of entry of this order, the defendants must account to this Court and counsel for the plaintiff for the following items generated in defendants business, to wit: any and all perishable agricultural commodities, inventories of food or other products derived from such perishable agricultural commodities, and any and all receivables or proceeds from such commodities and food or other products, which in any way have been distributed or disposed of, directly or indirectly, in whole or in part, absolutely or as security on or after June 4, 2007 with a description of the property involved, the recipient, the date and the purpose of the distribution; and
- (iv) ordered that if the Defendants fail to pay Plaintiff in full within three (3) business days from the date of entry of this order, the defendants must account to this Court and counsel for the plaintiff for

all assets in defendants' ownership, possession, custody and/or control, or in the possession, custody and/or control of entities controlled by defendants, including the date of acquisition and whether or not such assets or any interest therein derived from the proceeds of the sale of perishable agricultural commodities by Los Compadres Products Corp. and Josefa F. Perez, and, if not, the source of such assets; and

(v) ordered to restore to the PACA trust any PACA trust assets derived directly or indirectly from EXP Group, LLC. operations and received or transferred by them on or after June 4, 2007; and

(vi) ordered to segregate and escrow all proceeds from the sale of perishable agricultural commodities in a trust account to be designated "Los Compadres PACA Escrow Account" with plaintiff's counsel, Gentile & Dickler, LLP, as escrow agent, depositing therein all cash assets of the PACA trust, no withdrawals to be made therefrom pending further order of this Court; and

(vii) ordered that if the Defendants fail to pay Plaintiff in full within three (3) business days from the date of entry of this order, the Defendants must deliver to Plaintiff's counsel complete list of all accounts receivable of Los Compadres Products Corp., generated by its perishable agricultural commodities business with those receivables

being collected by defendants' or plaintiff's counsel and deposited in

the "Los Compadres PACA Escrow Account," and it is further ~~ORDERED THAT SECURITY IN THE AMOUNT OF \$ Be posted by 12/30/07~~
~~SECURITY IN THE AMOUNT OF \$ Be posted by 12/30/07~~
ORDERED, that this Order will be binding upon the parties to this action, their

officers, agents, servants, employees, banks, or attorneys and all other persons or
entities who receive actual notice of this Order, and it is further

✓ ORDERED, that this order will expire 10 days after entry unless within
such time the order for good cause shown is extended for a like period, or unless the
Defendants consent that it may be extended for a longer period; and it is further
~~Ordered that in view of the return checks from defendant and the fact that~~
ORDERED, that the Plaintiff shall not be required to post a bond hereunder,
and it is further ~~Plaintiff has not been paid no security will be required~~

✓ ORDERED, that this order to show cause together with copies of the papers
upon which it was granted be served upon the Defendants Los Compadres Products
Corp. and Josefa F. Perez, or their attorneys on or before Friday, November 9, 2007
at 5AM, 2007.

✓ This Temporary Restraining Order is entered this 8th day of
November 2007 at 2 p.m. A hearing on plaintiff's motion for a
preliminary injunction is scheduled for Tuesday November 13, 2007 at 11 A.m.

Dated: New York, New York
November ~~8~~ 2007

✓ ISSUED: _____

Paul R. Kelly

, U.S.D.J.